



**David E. Pierce, PhD**  
*Director*

# *Commonwealth of Massachusetts*

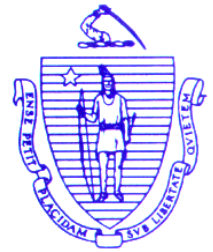
## **Division of Marine Fisheries**

251 Causeway Street, Suite 400

Boston, Massachusetts 02114

(617)626-1520

fax (617)626-1509



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September 20, 2018

Michael Pentony, Regional Administrator  
NOAA Fisheries, GARFO  
55 Great Republic Drive  
Gloucester, MA 01930

RE: Proposal to augment the Atlantic Large Whale Take Reduction Plan through state regulation

Dear Mr. Pentony,

The Massachusetts Division of Marine Fisheries (DMF) proposes to augment the Atlantic Large Whale Take Reduction Plan through the future proposals for state regulations affecting fixed gear fisheries to protect right whales in waters under the jurisdiction of the Commonwealth.

This proposal is an effort to formalize recent, current and future whale conservation efforts by DMF, present those efforts to the Take Reduction Team, and receive your feedback. Final adoption of regulations affecting Massachusetts fixed gear fisheries would have to undergo the normal rulemaking procedures including approval by the Massachusetts Marine Fisheries Advisory Commission, as required by state law. However, I am confident the conservation proposals after public hearing will be embraced by the Commission given the urgency of the right whale decline.

The changes we propose will reduce the risk of entanglement and reduce the threat of serious injury and mortality through dynamic extension of seasonal gear closures near right whale aggregations in May and capping of end-line breaking strength in state waters. The state's trap/pot fisheries will be affected by possible seasonal closure extensions and gear related aspects of the proposal. The outcome of our proposal will be a reduced overlap between right whales and gear in the month of May and a cap on endline strength allowed in state waters.

The Division of Marine Fisheries proposes the following management strategies:

- A continuation of DMF's adaptive management approach to extending the Massachusetts Bay Restricted Area fixed gear closure
- A year round ban in state waters of line greater than 3/8" in diameter

The federally-implemented fixed gear closure in the Massachusetts Bay Restricted Area has been in place since 2015. In that time, right whales have frequently remained in large numbers in Cape Cod Bay past the April 30 end date of the closure. In 2017 and 2018 DMF extended the closure in a portion of the Restricted Area within state waters to protect lingering aggregations of right whales from entanglement. The size, location and duration of the closure extensions were created by DMF using data on whale distribution and abundance from the Center for Coastal Studies aerial surveillance team. DMF worked with the Massachusetts Executive Office of Energy and Environmental Affairs to get the closure extended through emergency regulation. We propose to continue the practice of using state authority to extend the closure in portions of state waters, if deemed necessary based on whale sighting information. This will eliminate the risk of entanglement to right whales that continue to aggregate in those areas.

The purpose of the ban on line greater than 3/8" is to use line diameter to cap the breaking strength of ropes allowed in Massachusetts waters. For right whales, the breaking strength of entangling line is positively correlated with injury severity (Knowlton et al. 2015). The ban on lines greater than 3/8" will also serve an indirect form of gear marking by eliminating Massachusetts waters as the source of entanglements involving rope greater than 3/8". The majority of ropes taken off right whales in recent years have been large diameter, such as 1/2" or 5/8" (NMFS, TRT communication). This measure will be required for all trap/pot gear fisheries in Massachusetts waters.

The specifics of the proposals are as follows:

**Extension of Massachusetts Bay Restricted Area fixed gear closure due to lingering right whale aggregations**

- i. Target Fishery: All trap/pot fisheries
- ii. Target Area: Portions of the Massachusetts Bay Restricted Area
- iii. Seasonal Components: DMF will evaluate the presence of lingering right whale aggregations beyond the April 30 end date of the closure and work under state authority to extend the closure in portions of state waters, if deemed necessary. The seasonal closure will be extended until aerial surveillance data suggests large aggregations of Right whales are dispersing and leaving the area.
- Iv Quantity Of Vertical Lines Removed: . 100% of all vertical lines will be removed from this portion of the Massachusetts Bay Restricted Area until the closure is lifted.
- v. Enforcement: Any closure extensions will be enforced by the Massachusetts Environmental Police.
- vi. Impacts: Extending the closure will eliminate the risk of entanglement for right whales in those areas.

vii. Impacts on Other Species: The prohibition of fixed gear will eliminate the risk of entanglement for other large whales as well.

viii. Fishery Impacts: In Progress: DMF is currently working on a detailed analyses of impacts on the lobster fishery as a result of the closure extensions. We have two years of experience and data (2017 and 2018) in which to base our analyses on. Results will be forthcoming.

### **Ban on vertical line ropes greater than 3/8" in diameter in state waters**

i. Target Fishery: All trap/pot fisheries

ii. Target Area: Massachusetts state waters

iii. Seasonal Components: This measure would be required year-round

iv. Quantity of Vertical Lines Removed: Banning line greater than 3/8" diameter will not reduce the number of vertical lines deployed in the Massachusetts trap/pot fisheries (lobster, whelk, black sea bass, scup, tautog). The primary benefits of this proposal are twofold: 1) It eliminates the use of large diameter lines (7/16" and larger) in state waters, that are most commonly associated with entanglements resulting in serious injury and mortality; and 2) It serves as a defacto gear marking scheme in addition to the standard color coded gear marking requirements.

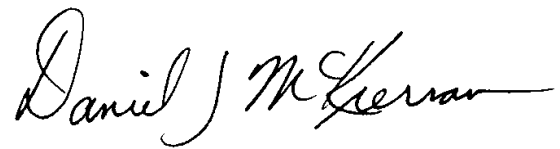
v. Enforcement: The cap on rope diameter would be enforced by the Massachusetts Environmental Police.

vi. Impacts on Right Whales: The cap on rope diameter limits the breaking strength of ropes that can be fished in Massachusetts state water. Ropes of higher breaking strength are more associated with severe injuries in right whales.

vii. Impacts on Other Species: The cap on rope diameter would be beneficial to other large whale species too.

viii. Fishery Impacts: MADMF does not currently collect information on the line diameter used by the fishermen we permit. Consequently, we are not able to quantify the number of fishermen who would be impacted by the ban on rope larger than 3/8" diameter. However, based on discussion with industry representatives from the Massachusetts Lobstermen's Association and other industry members at large, it is our understanding that there is only a very small portion of fishermen who currently deploy rope larger than 3/8" in state waters.

Sincerely,

A handwritten signature in black ink that reads "Daniel J. McKiernan". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Daniel J. McKiernan, Deputy Director (On behalf of Director David Pierce)

#### REFERENCES

Knowlton, A. R., Robbins, J., Landry, S., McKenna, H. A., Kraus, S. D., & Werner, T. B. (2016). Effects of fishing rope strength on the severity of large whale entanglements. *Conservation Biology*, **30**(2), 318–328

CC: Massachusetts Marine Fisheries Advisory Commission